

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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PAUL SUTHERLAND PHOTOGRAPHY LLC

ECF CASE

Plaintiff,

07 CV 3748
(Judge Rakoff)

-against-

THE MCGRAW HILL COMPANIES and
DR. LEWIS KOHL

Defendants.

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Defendant, The McGraw-Hill Companies, Inc., by its attorneys, Cowan, Liebowitz & Latman P.C., for its Answer to the Complaint:

1. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 1.
2. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 2.
3. Admits that The McGraw-Hill Companies, Inc. ("McGraw-Hill") is a New York corporation with its principal offices at 1221 Avenue of the Americas, New York, NY 10022 and denies the remaining allegations in paragraph 3.

4. Repeats paragraph 3, admits that it produces, distributes and markets textbooks in the United States and abroad, and denies the remaining allegations in paragraph 4.
5. Admits the allegations in paragraph 5.
6. Admits that this civil action purports to be for copyright infringement, as alleged in paragraph 6.
7. Does not contest this Court's jurisdiction, as alleged in paragraph 7.
8. Does not contest this Court's venue, as alleged in paragraph 8.
9. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 9.
10. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 10.
11. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 11.
12. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 12.
13. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 13.
14. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 14.
15. Admits the allegations in paragraph 15.

16. Admits the parties entered into a license agreement ("Agreement") dated June 17, 2003 (Exhibit D to the Complaint), respectfully refers the Court to the Agreement for its terms, and denies the remaining allegations in paragraph 16.
17. Respectfully refers the Court to the Agreement for its terms, and denies the remaining allegations in paragraph 17.
18. Respectfully refers the Court to the Agreement for its terms, and denies the remaining allegations in paragraph 18.
19. Respectfully refers the Court to the Agreement for its terms, and denies the remaining allegations in paragraph 19.
20. Respectfully refers the Court to the Agreement for its terms, and denies the remaining allegations in paragraph 20.
21. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 21.
22. Respectfully refers the Court to the Agreement and to the November 4, 2005 license agreement ("2005 Agreement") for their terms, and denies the remaining allegations in paragraph 22.

23. Respectfully refers the Court to the Agreement and the 2005 Agreement for their terms, and denies the remaining allegations in paragraph 23.
24. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 24.
25. Admits that McGraw-Hill made its textbook, Atlas of Pediatric Emergency Medicine, available for sale abroad through several websites, states that any deviation from the Agreement's and the 2005 Agreement's terms would not be copyright infringement, and in that context denies the remaining allegations in paragraph 25.
26. Denies publication of the textbook in any version in 2005, states that any deviation from the Agreement's and the 2005 Agreement's terms would not be copyright infringement, and in that context denies the remaining allegations in paragraph 26.
27. Admits that it submitted the textbook for display (not reproduction or downloading) in the Amazon Search Inside the Book program, and denies the remaining allegations in paragraph 27.
28. Admits that it made electronic use of the textbook, states that any deviation from the Agreement's and the 2005 Agreement's terms would not be copyright infringement, and

in that context denies the remaining allegations in paragraph 28.

29. States that any deviation from the Agreement's and the 2005 Agreement's terms would not be copyright infringement, and in that context denies the remaining allegations in paragraph 29.

As to First Claim for Relief

30. Repeats the responses to paragraphs 1 through 29.
31. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 31.
32. Admits that plaintiff purports to state a claim under Section 501 of the Copyright Act, as alleged in paragraph 32.
33. Admits that the textbook was available in electronic format in May 2007, states that such use would not be copyright infringement, and in that context denies the remaining allegations in paragraph 33.
34. Admits that it distributed the textbook outside of the United States, states that any deviation from the Agreement's and 2005 Agreement's terms would not be copyright infringement, respectfully refers the Court to the Agreement and the 2005 Agreement for their terms, and denies the remaining allegations in paragraph 34.

- 35. States that any deviation from the Agreement's and 2005 Agreement's terms would not be copyright infringement, and in that context denies the remaining allegations in paragraph 35.
- 36. Denies the allegations in paragraph 36.
- 37. Respectfully refers the Court to the Agreement and the 2005 Agreement for their terms and denies the remaining allegations in paragraph 37.
- 38. Admits that McGraw-Hill has knowledge of its use of plaintiff's images, and denies the remaining allegations in paragraph 38.
- 39. Denies the allegations in paragraph 39.
- 40. Denies the allegations in paragraph 40.
- 41. Denies the allegations in paragraph 41.

As to Second Claim for Relief

- 42. Repeats the responses to paragraphs 1 through 41.
- 43. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 43.
- 44. Admits that plaintiff purports to state a claim under Section 501 of the Copyright Act, as alleged in paragraph 44.
- 45. Admits that the textbook was available in electronic format in May 2007, states that such use would not be copyright

infringement, and in that context denies the remaining allegations in paragraph 45.

46. Admits that it distributed the textbook outside the United States, states that such use would not be copyright infringement, respectfully refers the Court to the Agreement and the 2005 Agreement for their terms, and denies the remaining allegations in paragraph 46.

47. Denies publication of the textbook in any version in 2005, states that any deviation from the Agreement's and 2005 Agreement's terms would not be copyright infringement, and in that context denies the remaining allegations in paragraph 47.

48. Denies the allegations in paragraph 48.

49. Respectfully refers the Court to the Agreement and the 2005 Agreement for their terms and denies the remaining allegations in paragraph 49.

50. Admits that McGraw-Hill has knowledge of its use of plaintiff's images, and denies the remaining allegations in paragraph 50.

51. Denies the allegations in paragraph 51.

52. Denies the allegations in paragraph 52.

53. Denies the allegations in paragraph 53.

As to Third Claim for Relief

54. Repeats the responses to paragraphs 1 through 53.

- 55. Denies the allegations in paragraph 55.
- 56. Paragraph 56 does not call for a response.
- 57. Denies all allegations not specifically admitted above.

As to the Prayer for Relief

- 58. Plaintiff is not entitled to any of the relief requested in the Complaint.

Affirmative and Other Defenses

- 59. The Complaint (and each Claim therein) fails to state a claim or cause of action on which relief can be granted.
- 60. The actions plaintiff complains of, if true, would constitute breach of contract and not copyright infringement.
- 61. Any use plaintiff claims was unlicensed would be nonactionable as de minimus.
- 62. Any use plaintiff claims was unlicensed would be nonactionable as fair use.
- 63. The Complaint is barred, in whole or in part, by laches, estoppel, waiver, license and/or acquiescence.
- 64. Under Section 412(1) of the Copyright Act, 17 U.S.C. §412(1), plaintiff is barred from the recovery of statutory damages and attorney's fees, as provided by Sections 504 and 505 of the Copyright Law (17 U.S.C. §§504, 505), because the effective date of the copyright registration

for each of plaintiff's works occurred after the commencement of the alleged infringement of plaintiff's copyright.

WHEREFORE, defendant The McGraw-Hill Companies, Inc. (sued herein as shown in the caption), demands judgment that the Complaint be dismissed with prejudice and that it be awarded its full costs, including reasonable attorney's fees, and be granted such other relief as the Court may deem just and proper.

Dated: New York, NY
June 27, 2007

s/ Richard Dannay
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